

AMENDED IN ASSEMBLY AUGUST 31, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 931

Introduced by Senator ~~Vargas~~ *Evans*

(Principal coauthor: ~~Assembly Member Lara~~ coauthors: *Assembly Members Yamada and Carter*)

February 18, 2011

~~An act to amend Sections 3506, 3519, 3543.5, and 3571 of the Government Code, relating to public employee organizations. An act to amend Sections 215 and 225.5 of, and to add Section 213.5 to, the Labor Code, relating to employment.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 931, as amended, ~~Vargas~~ *Evans*. ~~Public employee organizations. Payroll cards.~~

Existing law prohibits an employer from issuing in payment of wages due certain instruments, including an order, check, draft, note, memorandum, scrip, coupon, card, or other acknowledgment of indebtedness or redeemable instrument, unless specified requirements are satisfied.

This bill would authorize an employer to pay an employee's wages by means of a payroll card, as defined, provided that specified requirements are satisfied. In addition, the bill would make a violation of its provisions a misdemeanor and would subject a violator to specified civil penalties. By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~The Meyers-Milias-Brown Act, the Ralph C. Dills Act, the provisions commonly referred to as the Educational Employment Relations Act, and the Higher Education Employer-Employee Relations Act each provide for negotiations concerning wages, hours, and other terms and conditions of employment between a state or local public employer and representatives of recognized employee organizations. Those acts prohibit public employers from, among other things, intimidating, coercing, or discriminating against employees because of their exercise of rights guaranteed under the acts, as specified.~~

~~This bill would additionally prohibit public agencies from using public funds to pay outside consultants or legal advisors for the purpose of counseling the public employer about ways to minimize or deter the exercise of rights guaranteed under this chapter. Under this bill, these provisions would not apply to payments for representation of a public sector employer before any court, administrative agency, or tribunal of arbitration, or for payments for engaging in collective bargaining on behalf of the employer with respect to wages, hours, or other terms and conditions of employment.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 213.5 is added to the Labor Code, to read:*
- 2 *213.5. (a) For purposes of this section, the following*
- 3 *definitions apply:*
- 4 *(1) "Cardholder agreement" means the terms and conditions*
- 5 *of the agreement between the issuer and the employee with regard*
- 6 *to the use of a payroll card.*
- 7 *(2) "Employer" means a person who directly or indirectly, or*
- 8 *through an agent or any other person, employs, or exercises control*
- 9 *over the wages, hours, or working conditions of, another person.*
- 10 *(3) "Issuer" means the payroll card issuer, and includes a*
- 11 *person acting as an agent or administrator of an issuer, directly*
- 12 *or indirectly. Issuer does not include an employer or his or her*
- 13 *employees unless the employer is also the payroll card issuer.*

1 (4) “Payroll card” means a prepaid card, code, or other device,
2 issued or distributed to an employee by an employer, or by another
3 entity by arrangement with the employer, through which the
4 employer provides the employee access to his or her wages.

5 (5) “Payroll card account” means an account that holds funds
6 drawn upon by a payroll card.

7 (6) “Payroll card contract” means a contract entered into by
8 an employer with an issuer to provide employees with payroll
9 cards as a means to pay wages.

10 (7) “Payroll card fee schedule” means a written list of fees that
11 may be charged to an employee by an issuer in connection with a
12 payroll card account, or an explanation of how the fees will be
13 determined. A payroll card fee schedule shall be set forth in, and
14 may be subject to change in accordance with the terms of, the
15 cardholder agreement.

16 (8) “Regulation E” means Part 205 of Title 12 of the Code of
17 Federal Regulations, implementing the Electronic Fund Transfer
18 Act (15 U.S.C. Sec. 1693 et seq.), or any successor regulation, as
19 amended from time to time.

20 (b) Notwithstanding Section 212, an employer may pay wages
21 to an employee using a payroll card if all of the following
22 requirements are satisfied:

23 (1) The employer gives the employee the option of receiving his
24 or her wages by direct deposit to a depository account of the
25 employee’s choosing, the option of receiving payment by paper
26 check, and the option of receiving payment by payroll card before
27 the employee selects one of those options.

28 (2) The employer obtains the employee’s written consent to
29 receive wages by payroll card. Prior to obtaining the employee’s
30 consent, the employer shall provide the employee, in the language
31 the employer normally uses to communicate employment-related
32 information to the employee, all of the following information:

33 (A) A description, stated in plain language, of the employee’s
34 options for receiving wages.

35 (B) The cardholder agreement, including a clear, conspicuous,
36 and complete itemized payroll card fee schedule in a form that the
37 employee may retain for his or her records. The schedule shall
38 state the dollar amount of all fees.

39 (C) A list of the services available to the employee pursuant to
40 paragraph (6).

1 (3) *The employer does not make participation in the payroll*
2 *card program a condition of hire or continued employment.*

3 (4) *The employer selects an issuer that offers employees a*
4 *process for disputing payroll card account fees that have been*
5 *assessed in a manner inconsistent with the payroll card fee*
6 *schedule. The dispute process shall treat a fee dispute as if it were*
7 *an error under Section 205.11 or, if applicable, 205.18(c) of*
8 *Regulation E.*

9 (5) *The employer agrees to honor a written request by the*
10 *employee to change the method of receiving wages from a payroll*
11 *card to another method offered by the employer within two pay*
12 *periods from the time of the request.*

13 (6) *The payroll card contract provides for all of the following,*
14 *at no cost to the employee:*

15 (A) *A payroll card on which the employee may receive wages,*
16 *with no charges for application, initiation, loading, or*
17 *participation.*

18 (B) *One replacement payroll card per year.*

19 (C) *The ability to make at least one withdrawal per pay period*
20 *from an automated teller machine (ATM) that is outside the*
21 *network of the issuer without incurring a fee charged by the issuer.*
22 *The issuer shall not be held responsible for any fees imposed on*
23 *an employee by the financial institution whose ATM is accessed*
24 *by the employee.*

25 (D) *A minimum of four withdrawals per pay period from an*
26 *ATM within the network of the issuer.*

27 (E) *The ability to withdraw the entire amount of wages stored*
28 *on the card a minimum of once per pay period.*

29 (F) *The ability to use the payroll card for a minimum of two*
30 *point-of-sale transactions per pay period without incurring a fee*
31 *charged by the issuer. The issuer shall not be held responsible for*
32 *any fees imposed on an employee by a retailer in connection with*
33 *a point-of-sale transaction.*

34 (G) *The means to access balance or other account information*
35 *online, by way of an interactive voice response system or another*
36 *automated system offered in conjunction with the payroll card, in*
37 *a manner that allows access to account information 24 hours a*
38 *day, 7 days a week.*

39 (H) *At least three telephone calls per month to a live customer*
40 *service representative.*

1 (I) *The option to receive ongoing periodic statements once every*
2 *two months if there has been activity on the card during either*
3 *month, or at least once every three months if there is a balance on*
4 *the payroll card but there has been no activity on the card account*
5 *during that three-month period. The employee shall be provided*
6 *with a choice of receiving statements in either electronic or paper*
7 *form, and shall have the right to decline to receive statements.*
8 *Each statement provided to an employee shall include all*
9 *transactions during the statement period, including deposits,*
10 *withdrawals, fees charged, and other transactions affecting the*
11 *payroll card account.*

12 (J) *The ability to close a payroll card account and obtain*
13 *payment of the balance remaining on the card.*

14 (7) *The payroll card agreement prevents withdrawals in excess*
15 *of the account balance and, to the extent possible, protects against*
16 *the account being overdrawn.*

17 (8) *The payroll card agreement does not impose fees based on*
18 *an employee's account balance or fees that are triggered by*
19 *declined transactions or overdrafts.*

20 (9) *The funds in the payroll card account do not expire. The*
21 *payroll card account may be closed after 24 continuous months*
22 *of inactivity, with reasonable notice to the employee, provided that*
23 *the remaining funds in the payroll card account are refunded to*
24 *the employee at no cost to the employee. If the payroll card has*
25 *an expiration date, the issuer shall provide a new replacement*
26 *card to the employee at least 15 days before the expiration date*
27 *at no charge to the employee.*

28 (10) *The payroll card account is not linked to any form of credit,*
29 *including a loan against future wages or a cash advance on future*
30 *wages. This paragraph does not prohibit an issuer from honoring*
31 *an overdraft transaction at no additional cost to the employee or*
32 *prohibit an employer from providing an advance on wages already*
33 *earned to increase the frequency of the pay period of a classified*
34 *employee, as defined in Section 41401 of the Education Code, at*
35 *no additional charge to the employee.*

36 (11) *The payroll card account is insured by the Federal Deposit*
37 *Insurance Corporation or the National Credit Union*
38 *Administration on a passthrough basis to the employee.*

39 (c) *An employer that executes a payroll card contract that*
40 *complies with this section shall not be liable for any fee charged*

1 against an employee under a payroll card fee schedule, provided
2 that the employer does not receive any portion of any fee charged
3 to an employee, except when the employer is also the issuer.

4 (d) An employer that pays wages to employees through payroll
5 cards without a payroll card contract that meets the requirements
6 of this section shall reimburse its employees for all fees charged
7 by the issuer that may have been assessed in a manner inconsistent
8 with paragraph (6) of subdivision (b).

9 (e) Any dispute between the issuer and the employee that is not
10 resolved to the satisfaction of both parties pursuant to the dispute
11 resolution process referenced in paragraph (4) of subdivision (b)
12 shall be resolved pursuant to the terms of the cardholder
13 agreement.

14 (f) An employer shall deposit all wages owed to an employee
15 who has elected in writing to receive his or her wages through a
16 payroll card, or a portion thereof as arranged in writing between
17 the employer and the employee, into the employee's payroll card
18 account on or before the employee's designated payday. The
19 employee shall be deemed to have been paid wages owed at the
20 time the wages are deposited into the employee's payroll card
21 account and the employee has access to those wages. If there is
22 any delay of an employee's access to wages due to an error by the
23 issuer, the employer shall not be held liable for this delay as long
24 as the employer deposited the proper amount of wages into the
25 account on or before the designated payday.

26 (g) An employer shall be liable for any wages due and not timely
27 paid onto a payroll card or other elected method of payment
28 pursuant to subdivision (f).

29 (h) A claim made by an employee against the issuer under this
30 section shall not affect the right of an employer to pursue any
31 claims or remedies it may have against the issuer.

32 (i) Nothing in this section shall relieve the employer of his or
33 her obligations under subdivision (a) of Section 226.

34 (j) A payroll card contract entered into before the effective date
35 of the act adding this section need not be renegotiated to reflect
36 the provisions of this section until the contract's expiration or
37 renewal date, but in no event later than January 1, 2013.

38 SEC. 2. Section 215 of the Labor Code is amended to read:

39 215. ~~Any~~ A person, or the agent, manager, superintendent, or
40 officer thereof, who violates any provision of Section 201.3, 204,

1 204b, 205, 207, 208, 209, ~~or~~ 212, *or* 213.5 is guilty of a
2 misdemeanor. ~~Any~~ A failure to keep posted any notice required
3 by Section 207 is prima facie evidence of a violation of these
4 sections.

5 *SEC. 3. Section 225.5 of the Labor Code is amended to read:*

6 225.5. In addition to, and entirely independent and apart from,
7 any other penalty provided in this article, ~~every~~ a person who
8 unlawfully withholds wages due ~~any~~ an employee in violation of
9 Section 212, 213.5, 216, 221, 222, or 223 shall be subject to a civil
10 penalty as follows:

11 (a) For ~~any~~ an initial violation, one hundred dollars (\$100) for
12 each failure to pay each employee.

13 (b) For each subsequent violation, or any willful or intentional
14 violation, two hundred dollars (\$200) for each failure to pay each
15 employee, plus 25 percent of the amount unlawfully withheld.

16 The penalty shall be recovered by the Labor Commissioner as
17 part of a hearing held to recover unpaid wages and penalties or in
18 an independent civil action. The action shall be brought in the
19 name of the people of the State of California and the Labor
20 Commissioner and attorneys thereof may proceed and act for and
21 on behalf of the people in bringing the action. Twelve and one-half
22 percent of the penalty recovered shall be paid into a fund within
23 the Labor and Workforce Development Agency dedicated to
24 educating employers about state labor laws, and the remainder
25 shall be paid into the State Treasury to the credit of the General
26 Fund.

27 *SEC. 4. No reimbursement is required by this act pursuant to*
28 *Section 6 of Article XIII B of the California Constitution because*
29 *the only costs that may be incurred by a local agency or school*
30 *district will be incurred because this act creates a new crime or*
31 *infraction, eliminates a crime or infraction, or changes the penalty*
32 *for a crime or infraction, within the meaning of Section 17556 of*
33 *the Government Code, or changes the definition of a crime within*
34 *the meaning of Section 6 of Article XIII B of the California*
35 *Constitution.*

36 ~~SECTION 1. Section 3506 of the Government Code is amended~~
37 ~~to read:~~

38 ~~3506. (a) Public agencies and employee organizations shall~~
39 ~~not interfere with, intimidate, restrain, coerce or discriminate~~

1 against public employees because of their exercise of their rights
2 under Section 3502.

3 (b) Public agencies shall not use public funds to pay outside
4 consultants or legal advisors for the purpose of counseling the
5 public employer about ways to minimize or deter the exercise of
6 rights guaranteed under this chapter.

7 (c) Nothing in this section shall be construed to apply to
8 payments for representation of a public sector employer before
9 any court, administrative agency, or tribunal of arbitration, or for
10 payments for engaging in collective bargaining on behalf of the
11 employer with respect to wages, hours, or other terms and
12 conditions of employment.

13 SEC. 2. Section 3519 of the Government Code is amended to
14 read:

15 3519. (a) It shall be unlawful for the state to do any of the
16 following:

17 (1) Impose or threaten to impose reprisals on employees, to
18 discriminate or threaten to discriminate against employees, or
19 otherwise to interfere with, restrain, or coerce employees because
20 of their exercise of rights guaranteed by this chapter. For purposes
21 of this subdivision, "employee" includes an applicant for
22 employment or reemployment.

23 (2) Deny to employee organizations rights guaranteed to them
24 by this chapter.

25 (3) Refuse or fail to meet and confer in good faith with a
26 recognized employee organization.

27 (4) Dominate or interfere with the formation or administration
28 of any employee organization, or contribute financial or other
29 support to it, or in any way encourage employees to join any
30 organization in preference to another.

31 (5) Refuse to participate in good faith in the mediation procedure
32 set forth in Section 3518.

33 (6) Use public funds to pay outside consultants or legal advisors
34 for the purpose of counseling the public employer about ways to
35 minimize or deter the exercise of rights guaranteed under this
36 chapter.

37 (b) Nothing in this section shall be construed to apply to
38 payments for representation of a public sector employer before
39 any court, administrative agency, or tribunal of arbitration, or for
40 payments for engaging in collective bargaining on behalf of the

1 ~~employer with respect to wages, hours, or other terms and~~
2 ~~conditions of employment.~~

3 ~~SEC. 3. Section 3543.5 of the Government Code is amended~~
4 ~~to read:~~

5 ~~3543.5. (a) It is unlawful for a public school employer to do~~
6 ~~any of the following:~~

7 ~~(1) Impose or threaten to impose reprisals on employees, to~~
8 ~~discriminate or threaten to discriminate against employees, or~~
9 ~~otherwise to interfere with, restrain, or coerce employees because~~
10 ~~of their exercise of rights guaranteed by this chapter. For purposes~~
11 ~~of this subdivision, "employee" includes an applicant for~~
12 ~~employment or reemployment.~~

13 ~~(2) Deny to employee organizations rights guaranteed to them~~
14 ~~by this chapter.~~

15 ~~(3) Refuse or fail to meet and negotiate in good faith with an~~
16 ~~exclusive representative. Knowingly providing an exclusive~~
17 ~~representative with inaccurate information, whether or not in~~
18 ~~response to a request for information, regarding the financial~~
19 ~~resources of the public school employer constitutes a refusal or~~
20 ~~failure to meet and negotiate in good faith.~~

21 ~~(4) Dominate or interfere with the formation or administration~~
22 ~~of any employee organization, or contribute financial or other~~
23 ~~support to it, or in any way encourage employees to join any~~
24 ~~organization in preference to another.~~

25 ~~(5) Refuse to participate in good faith in the impasse procedure~~
26 ~~set forth in Article 9 (commencing with Section 3548).~~

27 ~~(6) Use public funds to pay outside consultants or legal advisors~~
28 ~~for the purpose of counseling the public employer about ways to~~
29 ~~minimize or deter the exercise of rights guaranteed under this~~
30 ~~chapter.~~

31 ~~(b) Nothing in this section shall be construed to apply to~~
32 ~~payments for representation of a public sector employer before~~
33 ~~any court, administrative agency, or tribunal of arbitration, or for~~
34 ~~payments for engaging in collective bargaining on behalf of the~~
35 ~~employer with respect to wages, hours, or other terms and~~
36 ~~conditions of employment.~~

37 ~~SEC. 4. Section 3571 of the Government Code is amended to~~
38 ~~read:~~

39 ~~3571. (a) It shall be unlawful for the higher education employer~~
40 ~~to do any of the following:~~

1 ~~(1) Impose or threaten to impose reprisals on employees, to~~
2 ~~discriminate or threaten to discriminate against employees, or~~
3 ~~otherwise to interfere with, restrain, or coerce employees because~~
4 ~~of their exercise of rights guaranteed by this chapter. For purposes~~
5 ~~of this subdivision, “employee” includes an applicant for~~
6 ~~employment or reemployment.~~

7 ~~(2) Deny to employee organizations rights guaranteed to them~~
8 ~~by this chapter.~~

9 ~~(3) Refuse or fail to engage in meeting and conferring with an~~
10 ~~exclusive representative.~~

11 ~~(4) Dominate or interfere with the formation or administration~~
12 ~~of any employee organization, or contribute financial or other~~
13 ~~support to it, or in any way encourage employees to join any~~
14 ~~organization in preference to another. However, subject to rules~~
15 ~~and regulations adopted by the board pursuant to Section 3563, an~~
16 ~~employer shall not be prohibited from permitting employees to~~
17 ~~engage in meeting and conferring or consulting during working~~
18 ~~hours without loss of pay or benefits.~~

19 ~~(5) Refuse to participate in good faith in the impasse procedure~~
20 ~~set forth in Article 9 (commencing with Section 3590).~~

21 ~~(6) Consult with any academic, professional, or staff advisory~~
22 ~~group on any matter within the scope of representation for~~
23 ~~employees who are represented by an exclusive representative, or~~
24 ~~for whom an employee organization has filed a request for~~
25 ~~recognition or certification as an exclusive representative until~~
26 ~~such time as the request is withdrawn or an election has been held~~
27 ~~in which “no representative” received a majority of the votes cast.~~
28 ~~This subdivision is not intended to diminish the prohibition of~~
29 ~~unfair practices contained in subdivision (d). For the purposes of~~
30 ~~this subdivision, the term “academic” shall not be deemed to~~
31 ~~include the academic senates.~~

32 ~~(7) Use public funds to pay outside consultants or legal advisors~~
33 ~~for the purpose of counseling the public employer about ways to~~
34 ~~minimize or deter the exercise of rights guaranteed under this~~
35 ~~chapter.~~

36 ~~(b) Nothing in this section shall be construed to apply to~~
37 ~~payments for representation of a public sector employer before~~
38 ~~any court, administrative agency, or tribunal of arbitration, or for~~
39 ~~payments for engaging in collective bargaining on behalf of the~~

- 1 ~~employer with respect to wages, hours, or other terms and~~
- 2 ~~conditions of employment.~~

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